

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TORIANO SMITH,

Plaintiff,

v.

ORDER
06-C-685-S

SCOTT NICKLIN, JOSEPH SCIBANA
and UNITED STATES OF AMERICA,

Defendants.

The above entitled matter was transferred to this Court from the United States District Court of the Eastern District of Wisconsin. Plaintiff has paid an initial partial filing fee of \$210.75. According to 28 U.S.C. § 1915(b)(2), the institution's financial officer is authorized to deduct monthly payments from plaintiff's account until the \$350.00 filing fee is paid in full. The Court addresses the merits of plaintiff's complaint.

Plaintiff alleges that he was injured at FCI-Oxford because of the actions of employees of the Bureau of Prisons. He has arguably stated a claim under the Federal Tort Claims Act. 28 U.S.C. § 2671 et. seq. He has not, however, alleged that he has exhausted the administrative remedies required by the Act. Accordingly, his complaint must be dismissed without prejudice for his failure to exhaust his administrative remedies.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already

provided to undermine this Court's conclusion that his complaint must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that plaintiff's complaint and all claims contained therein is DISMISSED without prejudice for his failure to exhaust his administrative remedies.

Entered this 27th day of November, 2006.

BY THE COURT:

S/
JOHN C. SHABAZ
District Judge